

Court of Appeals, State of Michigan

ORDER

People of MI v James Lawrence Baptist

Docket No. 260221

LC No. 04-014437-FH

Peter D. O'Connell
Presiding Judge

Patrick M. Meter

Bill Schuette
Judges

The Court orders that the motions for immediate consideration and to waive the transcript requirement of MCR 7.209 are GRANTED.

In lieu of granting the application, pursuant to MCR 7.205(D)(2) and MCR 7.216(A)(7), the Court orders that the denial of the admission of the redacted 911 audiotape into evidence is PEREMPTORILY REVERSED. The audiotape is admissible as an excited utterance under MRE 803(2) and is not *unfairly* prejudicial. *Waknin v Chamberlain*, 467 Mich 329, 335; 653 NW2d 176 (2002); *People v Hendrickson*, 459 Mich 229; 586 NW2d 906 (1998); *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). Furthermore, the evidence is not merely cumulative. Cumulative evidence lacks probative value because it adds no new information. In this case, the 911 call has significant probative value because it rebuts defendant's claim that the assault never occurred or that the victim's memory is faulty.

Accordingly, the matter is REMANDED for further proceedings consistent with this order. We do not retain jurisdiction. The motion for stay is DENIED as moot.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 14 2005

Date

Sandra Schultz Mengel
Chief Clerk